

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

SEP 21 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Eligibility for the Specialized)
Mobile Radio Services)
and Radio Services in the)
220-222 MHz Land Mobile Band)
and Use of Radio Dispatch)
Communications)

GN Docket No. 94-90

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS

The NYNEX Companies

Edward R. Wholl
120 Bloomingdale Road
White Plains, NY 10605
(914) 644-5525

Their Attorney

September 21, 1994

No. of Copies rec'd
List ABCDE

015

Table of Contents

SUMMARY	i
I. INTRODUCTION AND SUMMARY OF POSITION	1
II. WIRELINE PARTICIPATION IN SMR SERVICES WILL PRODUCE NUMEROUS PUBLIC BENEFITS WITHOUT CREATING ANY REGULATORY RISK	2
A. Wireline Common Carrier Participation In The SMR Service Would Result In The Introduction of New Services At Lower Costs	2
B. The Factors Which Initially Led to Wireline Eligibility Restrictions Are No Longer Present ...	4
C. Regulatory Safeguards Exist To Protect Against Possible Discrimination And Cross- Subsidization	5
1. Structural Safeguards Are Not Required And Should Not Be Adopted	6
III. THE PROHIBITION ON COMMON CARRIER DISPATCH SERVICE SHOULD BE TERMINATED	8
IV. CONCLUSION	10

SUMMARY

The Notice invites comments on the Commission's tentative conclusion that present restrictions which prohibit telephone common carriers that provide local exchange service from holding Specialized Mobile Radio ("SMR") licenses should be eliminated. The Notice also invites comment on the Commission's proposal to eliminate the current prohibition on the provision of dispatch service by cellular licenses and other licensees in the Public Mobile Services.

NYNEX supports the Commission's proposals to allow wireline carriers to provide SMR services and to permit all mobile service common carriers to provide dispatch service. By removing present restrictions, the Commission will enable wireline and mobile service common carriers to provide their customers the same comprehensive portfolio of wireless services offered by other commercial mobile radio service ("CMRS") providers. The increased competition created by wireline participation in the provision of SMR services will result in expanded customer choice, reduced rates and improved service.

RECEIVED

SEP 21 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Eligibility for the Specialized)
Mobile Radio Services) GN Docket No. 94-90
and Radio Services in the)
220-222 MHz Land Mobile Band)
and Use of Radio Dispatch)
Communications)

To: The Commission

COMMENTS

The NYNEX Companies¹ ("NYNEX"), by their attorney, submit their comments in response to the Notice of Proposed Rulemaking ("Notice") released August 11, 1994, in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY OF POSITION

The Notice invites comments on the Commission's tentative conclusion that present restrictions which prohibit telephone common carriers that provide local exchange service from holding Specialized Mobile Radio ("SMR") licenses should be eliminated.²

¹ The NYNEX Companies are New York Telephone Company, New England Telephone and Telegraph Company, and NYNEX Mobile Communications Company.

² Notice at ¶¶1, 15. Assuming that the Commission allows wireline entry into SMR services, the Notice seeks comment "on whether existing accounting safeguards applicable to LECs with CMRS operations are sufficient to protect against cross-subsidization and discriminatory pricing, or whether we should

The Notice also invites comment on the Commission's proposal to eliminate the current prohibition on the provision of dispatch service by cellular licenses and other licensees in the Public Mobile Services.³

NYNEX supports the Commission's proposals to allow wireline carriers to provide SMR services and to permit all mobile service common carriers to provide dispatch service. By removing present restrictions, the Commission will enable wireline and mobile service common carriers to provide their customers the same comprehensive portfolio of wireless services offered by other commercial mobile radio service ("CMRS") providers. The increased competition created by wireline participation in the provision of SMR services will result in expanded customer choice, reduced rates and improved service.

**II. WIRELINE PARTICIPATION IN SMR SERVICES WILL PRODUCE
NUMEROUS PUBLIC BENEFITS WITHOUT CREATING ANY
REGULATORY RISK**

**A. Wireline Common Carrier Participation In The SMR
Service Would Result In The Introduction Of New
Services At Lower Costs**

In proposing the elimination of the present wireline restrictions on SMR eligibility, the Commission correctly

also impose structural separation requirements on wireline carriers" seeking to provide SMR services. Notice at ¶27.

³ Notice at ¶¶1, 15.

concludes that wireline participation in SMR services would produce numerous potential benefits: (1) allowing wireline carriers to participate in SMR would produce significant economies of scope between wireline and SMR networks, which, in turn, would promote the rapid deployment of a SMR network infrastructure and yield a broader array of SMR services at lower costs to consumers; (2) repeal of the wireline ban could promote opportunities for additional entry of small entrepreneurs; and (3) wireline entry could infuse new capital and expertise into the mobile services marketplace which would stimulate the development of new technological advances.⁴

The Commission's conclusions are more than just theoretically sound. Wireline carriers, such as Southwestern Bell Corporation ("SWB") and US West, have operated SMR systems pursuant to waivers granted by the Commission. During the period of their operation, these wireline carriers have invested substantial amounts of capital to expand their SMR network infrastructure which, in turn, permitted them to offer new and innovative SMR services to their customers. Perhaps as significant as the public benefits derived from wireline

⁴ Notice at ¶¶ 17, 23-24.

participation in SMR service is the fact that these benefits were not vitiated by anticompetitive consequences.

B. The Factors Which Initially Led To Wireline Eligibility Restrictions Are No Longer Present

The Commission now appears to recognize that the competitive concerns which led to the SMR eligibility restrictions on wireline telephone common carriers in the 1970's are no longer applicable in the current competitive marketplace. Clearly, the prohibition on wireline entry is no longer required to promote competition in the fledgling SMR industry. During the last twenty years, SMR markets have become extremely competitive. Information provided to the Commission in Docket 86-3 demonstrates that there are no barriers to entry at either the state or local level and that there are many competitors in each market.⁵ In New York, for example, there are more than 300 licensed SMR providers.

The Commission correctly reasons that the highly developed nature of these markets makes it unlikely that wireline entry would chill further development of the service.⁶ The Commission's reasoning is confirmed by actual experience.

⁵ See, e.g., Request for Permanent Waiver filed by Southwestern Bell Corporation (September 18, 1992).

⁶ Notice at ¶21.

Wireline participation in SMR service has had no adverse effect on competition.⁷ Even if the concern over wireline participation in the SMR service were valid, the Commission has the ability to protect against any attempts by wireline carriers to engage in anticompetitive activities.

C. Regulatory Safeguards Exist To Protect Against Possible Discrimination And Cross-Subsidization

The Commission possesses adequate safeguards to protect against anticompetitive concentration of control of SMR licenses in particular markets. As the Commission observes, most available SMR spectrum has been licensed in metropolitan areas. As a result, wireline participation in SMR service will be largely limited to entering the SMR business by acquiring existing SMR businesses. These acquisitions will be subject to review under the Commission's transfer of control and assignment of license rules. The Commission will consider the competitive consequences of proposed acquisitions as one part of its public interest determination pursuant to Section 310 of the Communications Act.

Once permitted to enter the market, adequate safeguards exist to protect against possible discriminatory practices and cross-subsidization by wireline common carriers. Sections 201

⁷ SWB Petition for Waiver, Attachment B.

and 202 of the Communications Act provide the Commission with the ability to ensure that wireline carriers provide reasonable interconnection to any carrier that requests it. Moreover, the penalty provisions of the Communications Act provide an effective deterrent to those carriers who would have an incentive to discriminate in their interconnection practices.⁸ The non-structural accounting safeguards which currently exist, and which have proven to be successful in connection with wireline common carrier provision of competitive, non-regulated services, are more than adequate to protect against cross-subsidization in the event of wireline entry into the SMR service.

1. Structural Safeguards Are Not Required And Should Not Be Adopted

The Notice requests comment on whether the Commission should also impose structural separation requirements on wireline carrier seeking to offer SMR or commercial 220 MHz services.⁹ Imposition of structural separation requirements are not

⁸ In those instances in which wireline telephone common carriers are providing SMR service, NYNEX is not aware of a single complaint alleging discriminatory interconnection filed by an unaffiliated SMR provider against the wireline company.

⁹ Notice at ¶27.

necessary and would impede the development of a fully competitive market.¹⁰

The record before the Commission in Docket 90-314 demonstrates that the realities of the wireless marketplace make the imposition of structural separation requirements unnecessary.¹¹ That record also demonstrates that any concerns about wireline common carrier incentives to discriminate or to cross-subsidize can be addressed by non-structural safeguards which protect against such concerns but at a far less cost than structural separation.

There should be no mistake about the adverse public interest effects that will be caused by the adoption of structural safeguards. The infrastructure constraints imposed by the Commission's cellular separate subsidiary rules have prevented, or have significantly delayed, the Regional Bell Operating Companies from meeting demand for new and improved services, resolving technical problems and realizing cost efficiencies. It

¹⁰ The imposition of structural separation requirements only on wireline common carriers that provide SMR service would be inconsistent with the Commission's obligation under the Budget Act to promote regulatory parity in the treatment of entities providing comparable services.

¹¹ See, e.g., Petition for Reconsideration filed by NYNEX Corporation, December 8, 1993, pp. 16-22.

is the customer, of course, who ultimately suffers as a result of the limitations created by structural separation requirements because it is the customer who is denied the benefits that would otherwise result from the ability of the company to structure its operations in the most cost-effective manner and to match the competitive offerings of other providers. These considerations led the Commission to conclude that "no new separate subsidiary requirements are necessary for LECs (including BOCs) that provide PCS."¹² The Commission should reach the same conclusion with respect to wireline common carriers, including BOCs, that provide SMR service.¹³

III. THE PROHIBITION ON COMMON CARRIER DISPATCH SERVICE SHOULD BE TERMINATED

The Notice requests comment on the Commission's proposal to amend its rules to permit all mobile common carriers to provide dispatch services.¹⁴ The elimination of this prohibition would

¹² Amendment of the Commission's Rules to Establish New Personal Communications Services (GEN Docket No. 90-314), Second Report and Order, 8 FCC Rcd 7700 (1993).

¹³ Even if the Commission were to adopt structural safeguards applicable to the provision by LECs of SMR service, those structural separation requirements should not apply to the provision of SMR services by an already separate cellular affiliate of the LEC. Thus, concerns of discrimination in interconnection practices and cross-subsidization between regulated and un-regulated services would not apply to the provision of SMR service by NYNEX Mobile Communications Company.

¹⁴ Notice at ¶30.

enhance customer choice and the development of new services by permitting certain mobile service providers to enter new lines of business previously foreclosed to them.

The Budget Act permits the Commission to terminate the dispatch prohibition on common carriers.¹⁵ The Commission should do so in this proceeding. The reasons which warrant the termination of the dispatch prohibition are particularly well articulated in the comments filed by the Bell Atlantic Companies in GN Docket No. 93-252¹⁶.

In those comments, Bell Atlantic correctly observed that the original justification for the prohibition is no longer valid. The prohibition was adopted initially to ensure that common carriers did not stray from their common carrier purpose by devoting their frequency allocations to dispatch use. Even assuming that this concern presented a reasonable basis for the original imposition of the dispatch prohibition, Bell Atlantic points out that recent technological developments have eliminated

¹⁵ The termination of the dispatch prohibition on common carriers would be consistent with the purpose of the Budget Act to promote regulatory parity between providers of comparable services.

¹⁶ Comments of the Bell Atlantic Companies, filed November 8, 1993, in GN Docket No. 93-252, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services.

any conceivable justification for the dispatch provision. These technical developments provide common carriers with sufficient spectrum capacity so that they can offer dispatch services without compromising the primary offering of common carrier services.

The elimination of the dispatch prohibition will stimulate competition by permitting customers a wider range of choice. The Commission has consistently found that increased competition leads to lower prices and new and improved services. The Notice requests comment on the type of services that might be provided by cellular and other common carriers if the dispatch prohibition were terminated.¹⁷ As Bell Atlantic has previously observed:

Cellular and PCS providers may want to offer dispatch services as part of a package of services to customers. For example, a customer may use CMS for wireless PBX and want a wireless dispatch system for emergencies. Larger cellular subscribers may want a backup dispatch system to call selected cellular phones in an emergency. Thus dispatch can fill the needs of customers as an adjunct to cellular or other CMS service.¹⁸

IV. CONCLUSION

The Commission has consistently sought to adopt regulatory policies that will foster competition and which will fully

¹⁷ Notice at ¶ 31.


¹⁸ Bell Atlantic Comments at pp. 18-19.

utilize all of the telecommunications resources and expertise available to serve the public interest. It is evident that substantial changes have taken place in both the SMR and dispatch markets since the wireline eligibility restrictions were first adopted. The time has now come for the Commission to remove those restrictions. In doing so, the Commission can be confident that the public will receive the benefits of better service at lower prices.

WHEREFORE, for the reasons set forth herein, the Commission should permit wireline common carriers to provide SMR and dispatch services.

Respectfully submitted,

The NYNEX Companies

By: 
Edward R. Wholl

Their Attorney

120 Bloomingdale Road
White Plains, N.Y. 10605
(914) 644-5525

Dated: September 21, 1994